

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 20, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP1655**

**Cir. Ct. No. 2009TP11**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO SASHA G.,  
A PERSON UNDER THE AGE OF 18:**

**D'ANN K.,**

**PETITIONER-RESPONDENT,**

**v.**

**BENJAMIN J. G.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Jefferson County:  
JACQUELINE R. ERWIN, Judge. *Affirmed.*

¶1 VERGERONT, P.J.<sup>1</sup> Benjamin G. appeals the circuit court's order terminating his parental rights to Sasha G., born April 6, 2006. He contends the circuit court did not properly apply the totality of the circumstances test in determining that he failed to assume parental responsibility of Sasha. The ground for this argument is his claim that the court did not consider his testimony that he was unable to maintain a relationship with Sasha because her guardian, D'Ann K., was not responsive to his phone calls. Therefore, Benjamin contends, we should reverse the circuit court's order or remand to the circuit court for consideration of this factor. For the reasons we explain below, we conclude that Benjamin is not entitled to the relief he seeks. Accordingly, we affirm the order.

#### BACKGROUND

¶2 Benjamin is Sasha's biological father.<sup>2</sup> After her mother's high-risk pregnancy, Sasha was born prematurely on April 6, 2006, and spent the first six weeks of her life in the hospital. During this time, Benjamin regularly visited her. After her release from the hospital, Sasha lived with Benjamin and her mother until approximately August 2006. From August to September 2006, Sasha resided with D'Ann. Between September 2006 and January 2007, Sasha resided intermittently with Benjamin and her mother or with D'Ann.

¶3 In February 2007, Sasha's mother filed a petition for a permanent guardianship of Sasha because she was unable to provide for Sasha's needs.

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) and (3) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> Sasha's mother voluntarily terminated her parental rights, and that termination proceeding is not at issue on appeal.

Because Sasha's mother was married to another man at the time of Sasha's birth, her husband is listed as the "Presumed Father" and Benjamin is listed as the "Alleged Father" in this petition. Benjamin signed a waiver and consent to this petition. D'Ann was appointed permanent guardian by court order on March 12, 2007, and Sasha has resided with D'Ann since that time.

¶4 In August 2009, D'Ann filed a petition seeking to terminate Benjamin's parental rights to Sasha pursuant to WIS. STAT. § 48.415(6). The petition alleged that Benjamin did not have a substantial parental relationship with Sasha and had failed to take any voluntary steps to establish his paternity of Sasha.

¶5 Benjamin waived his right to a jury trial for the fact-finding hearing on grounds for termination of his parental rights. At the hearing before the court, Benjamin testified that he had visitation with Sasha several times while she was residing with D'Ann between 2007 and 2009. He further testified that he had made multiple phone calls to D'Ann, but that she did not always return his calls.

¶6 After the evidentiary hearing, the circuit court found that Benjamin did not have a substantial parental relationship with Sasha. In its oral ruling, the court rejected Benjamin's statutory argument that, because he had at one time assumed parental responsibility, failure to assume parental responsibility was no longer a ground on which his parental rights could be terminated. The court found that during the time that Sasha was residing with D'Ann, Benjamin did not make inquiries into her health, development, or daily activities. It further found that Benjamin had failed to provide Sasha with financial or emotional support during this time. As a result of its findings, the court concluded that Benjamin had failed to assume parental responsibility and was thus an unfit parent.

¶7 At the dispositional hearing, Benjamin testified that D’Ann had failed to answer or return the majority of his phone calls. He further testified that he did not attempt to contact D’Ann by going to her residence or place of employment because he was concerned that, if he did so, she would call the police. He claimed that D’Ann’s actions had prevented him from having more contact with Sasha. The circuit court did not find Benjamin’s explanations for his absence credible. After the hearing, the court found that it was in Sasha’s best interests to terminate Benjamin’s parental rights and ordered the termination. Benjamin appeals.

## DISCUSSION

¶8 On appeal, Benjamin initially argued that the circuit court applied the wrong legal standard when it determined that he was unfit, despite the fact that he had at one point had a substantial parental relationship with Sasha. After he filed his initial brief, the supreme court foreclosed this argument in *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶¶23, 33-35, \_\_ Wis. 2d \_\_, 797 N.W.2d 854.<sup>3</sup> Benjamin now argues that the court did not properly apply the totality of the circumstances test established in *Tammy W-G.* because it failed to consider Benjamin’s testimony that D’Ann failed to return his phone calls. Whether the circuit court applied the correct legal standard is a question of law that we review

---

<sup>3</sup> This appeal was placed on hold pending the supreme court’s decision in *Tammy W-G. v. Jacob T.*, 2011 WI 30, \_\_ Wis. 2d \_\_, 797 N.W.2d 854. By order dated June 14, 2011, the court gave the parties an opportunity to file briefs regarding the effect of *Tammy W-G.* on this appeal. Benjamin filed a brief on July 1, 2011. On July 18, 2011, D’Ann filed a motion for an extension of time to submit her brief. In view of this opinion, it is unnecessary for D’Ann to submit a supplemental brief, and the motion for extension is dismissed as moot.

de novo. *Landwehr v. Landwehr*, 2006 WI 64, ¶8, 291 Wis. 2d 49, 715 N.W.2d 180.

¶9 In order to establish grounds for termination of parental rights for failure to assume parental responsibility pursuant to WIS. STAT. § 48.415(6), the petitioner must show that the person whose rights are being terminated has “not had a substantial parental relationship with the child.” § 48.415(6)(a). Section 48.415(6)(b) provides:

“[S]ubstantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

In determining whether a parent has a substantial relationship with the child, the fact-finder should consider the totality of the circumstances over the entirety of the child’s life. *See Tammy W-G.*, \_\_\_ Wis. 2d \_\_\_, ¶¶23, 32. Grounds for termination must be shown by clear and convincing evidence. §§ 48.424(2), 48.31(1).

¶10 Benjamin argues that, because the circuit court did not expressly address his testimony that D’Ann did not always return his phone calls, it did not consider the totality of the circumstances. We disagree.

¶11 The court considered Benjamin’s entire relationship with Sasha. While the court found that Benjamin did have a substantial parental relationship with Sasha while she was an infant, it determined that over the course of Sasha’s

life, Benjamin had not had a substantial relationship with her. In making this determination, the circuit court considered many factors, including Benjamin's infrequent contacts with Sasha over the previous three years, his failure to make inquiries regarding her health and welfare, the lack of financial support he provided to Sasha, and the fact that he had failed to adjudicate Sasha's paternity, despite past experience doing so with another child. Although the court did not expressly address in its oral ruling after the evidentiary hearing Benjamin's testimony that D'Ann did not always return his phone calls, it implicitly found that Benjamin's attempts to see Sasha more often were not substantial, and it explicitly made this finding after the dispositional hearing. Furthermore, although Benjamin concedes that his alleged lack of opportunity to see Sasha is not a complete defense, he presents no additional arguments.

#### CONCLUSION

¶12 We conclude the circuit court did not fail to consider the totality of the circumstances in determining that Benjamin did not have a substantial relationship with Sasha. Accordingly, we affirm the circuit court's order terminating Benjamin's parental rights to Sasha.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

